IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

J U D G M E N T

D.B. CRIMINAL JAIL APPEAL NO.42/2002
(Pappu @ Akhtar Hussain Vs. State)

D.B. CRIMINAL JAIL APPEAL UNDER SECTION 383 Cr.P.C. AGAINST THE JUDGMENT DATED 19th DECEMBER, 2001 PASSED BY THE LEARNED ADDITIONAL DISTRICT & SESSIONS JUDGE (FAST TRACK), CHITTORGARH IN SESSIONS CASE NO.112/2001 – STATE OF RAJASTHAN VS PAPPU @ AKHTAR HUSSAIN.

DATE OF JUDGMENT : 05th FEBRUARY, 2007

P R E S E N T

HON'BLE MR. JUSTICE N.N.MATHUR
HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. C.P. Soni, Amicus Curiae for the appellant.
Mr. JPS Choudhary, Public Prosecutor.

BY THE COURT : (PER HON'BLE MR. MATHUR,J.)

1. This appeal is directed against the judgment dated 19.12.2001 passed by Additional District & Sessions Judge (Fast Track), Chittorgarh, convicting the appellant – Pappu @ Akhtar

Hussain of offence under Section 302 IPC and sentencing to imprisonment for life and to pay a fine of Rs.1000/-, in default of payment of fine to further undergo one month simple imprisonment.

2. Briefly stated the facts of the case are that on 28.8.2000 at about 9.15 p.m., PW-1 Daud lodged a first information report at Police Station Aakola stating inter alia that out of his five daughters and two sons, his eldest daughter Bismillah having taken divorce with her husband used to reside with him. His another daughter Hasina had married with the appellant – Pappu @ Akhtar Hussain, who used to work as a labourer at Udaipur. Appellant's wife Hasina was staying with him for last one month. Last evening, he arrived from Udaipur and took up quarrel with Hasina. In the evening at about 7 p.m., while he was lying on the cot, his wife PW-2 Hazra and PW-3 Hasina were sitting on the platform, the appellant arrived with a bag in his hand. He went inside the house and returned after sometime. The informant's wife questioned him for taking quarrel with Hasina on the last evening. On this, the appellant abused her in filthy language. He also abused other members of the family. His eldest daughter Bismillah came out of the house and questioned for abusing her mother. The appellant took out the knife from his pant and stabbed in her

stomach. On account of which, she fell down. There was profuse bleeding and she has scummed to the injuries. The incident was also witnessed by PW-4 Keshu.

3. On this information, police registered a case for offence under Sections 302 I.P.C. and proceeded with the investigation. The appellant was arrested on the spot. The police send the dead body for autopsy. PW-6 Dr. G.L. Bhatnagar conducted the autopsy on the dead body of Bismillah vide Ex.P-6 and noticed the following injuries :

> "Ante-mortem injures:
>
> 1. Stab wound 2 cm by 0.5 cm by 1.5 cm deep on lower part of chest over sternal region in between both breast. Edge of the wound clean cut parallel with sharp angles at two extremities. Clotted blood present.
>
> 2. Stab wound in the left side of abdomen 1.75 c.m. above umbilicus 2 cm by 0.5 cm penetrating stomach in only penetrating size 1.75 cm by 0.5 penetrating stomach 4 cm. away from pylorus/lower part of stomach excessive hemorrhage and cavity. Edge of the wound clean cut, parallel with sharp angles at two extremities clotted blood present.

In the opinion of the Doctor, the cause of death was shock due to stab injury in abdomen. All injuries were ante-motem in nature and sufficient to cause death in ordinary course of nature.

4. After usual investigation, the police laid charge-sheet against the appellant for offence under Sections 302 IPC. The appellant denied the charges levelled against him and claimed trial. During trial, the prosecution adduced oral and documentary evidence in support of the case. The appellant in his statement recorded under Section 313 of the Code of Criminal Procedure denied the correctness of the prosecution evidence appearing against him. The trial court having found the prosecution case proved against the appellant, convicted and sentenced him in the manner stated above.

5. Assailing the judgment of the trial court, it is contended by the learned counsel that the oral evidence produced by the prosecution is not credit-worthy. He has read the statement of the witnesses of the occurrence and pointed out certain infirmities. He has also submitted that the prosecution has failed to point out any motive for the alleged crime. On the other hand, learned Public Prosecutor supported the judgment of the trial court.

6. We have scanned and scrutinized the prosecution evidence carefully and considered the rival contentions. The prosecution has produced PW-1 Daud, PW-2 Hajra, PW-3

Hasina and PW-4 Kshu as witnesses of occurrence. PW-1 Daud has narrated the incident as stated in the first information report. We do not consider it necessary to restate his statement. There is a lengthy cross examination but nothing has been elicited to discredit the testimony of this witness. PW-2 Hajra is the mother of the deceased. She has stated that on the last evening, the appellant had took up quarrel with her daughter Hasina as such on the next day, she questioned him for the said incident. The appellant abused her in filthy language. Her eldest daughter Bismillah also arrived on the spot and questioned the appellant for abusing her in a filthy language. The appellant took out the knife and stabbed in the stomach of Bismillah. Bismillah fell down and scummed to the injuries on the spot. Nothing has been elicited in the cross-examination to discredit the testimony of this witness. PW-3 Hasina is the wife of the appellant. She narrated the entire incident almost in the manner stated by PW-1 Daud and PW-2 Hajra. Nothing has been elicited in the cross examination to discredit the testimony of this witnesses as well.

7. PW-4 Keshu deposed that at the time of incident, he was sitting on the shop of 'mahajan'. At about 7 p.m., the appellant arrived, he came out from the house of his father,

he was abusing. The deceased Bismillah questioned him for abusing her in filthy language. At that time, the appellant took out the knife from his pant and stabbed in the stomach of Bismillah. On account of which, she fell down and scummed to the injuries. He ran away from the spot but he was soon caught by the villagers. There is nothing in the cross-examination to discredit the testimony of this witness.

8. Thus, on the appreciation of the ocular evidence, it clearly appears that all the witnesses are natural and their presence on the place of occurrence cannot be doubted. The statements of witnesses found corroboration from the medical evidence. It is suffice to state that PW-6 Dr. G.L. Bhatnagar has stated that the injuries on the person of deceased were sufficient in the ordinary course of nature to cause death. PW-13 Suryaveer Singh has stated that the appellant was caught by the villagers and produced at the police station. He was arrested by Ex.P-8. The blood stained knife was taken out from his pant and seized on the spot vide Ex.P-9. The cloths of the appellant were also seized vide Ex.P-10. The incriminating articles were sent to the FSL. We do not consider necessary to deal with the link evidence as the same has not been challenged by the learned counsel. As per the FSL report Ex.P-17, the knife and the cloths of the accused-

appellant were found to be stained with human blood. It may be stated that the cloths of the deceased were also seized. As per the FSL report, Ex.P-17, the presence of blood on the cloths of the accused and the deceased were found to be of the same group i.e. "Group-AB", so as the knife.

9. Turning to the nature of offence, it is submitted by the learned Amicus Curiae that the incident had taken place all of sudden and as such, it cannot be said that the appellant had any intention to commit the murder of deceased – Bismillah. In support of the contention, he has placed reliance on the Division Bench judgment of this Court in Narednra Singh Vs. State of Rajasthan, reported in 2003 Cri.L.J. 703. Having perused the judgment, we are of the opinion that the ratio laid down in the said case is of no help in the instant case. The seriousness of the injuries clearly indicates that the appellant acted in a cruel manner. In the facts of the case, no other conclusion can be drawn except that the appellant intended to commit the murder of the deceased. Thus, we are of the view that the appellant has been rightly convicted and sentenced of offence under Section 302 I.P.C. No interference is warranted with the judgment of the trial court.

10. Consequently, the appeal being devoid of merit stands

dismissed. The appellant is in jail. He will serve out the remaining part of the sentence.

(GOPAL KRISHAN VYAS) J. **(N.N. MATHUR) J.**

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